

Gregory Mendoza
Governor



Stephen Roe Lewis
Lieutenant Governor

GILA RIVER INDIAN COMMUNITY *Executive Office*

"A New Generation of Leadership Serving the People"

November 21, 2012

David Albright
Manager, Ground Water Office
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Dear Mr. Albright,

Thank you for taking the time to meet with the Gila River Indian Community (the "Community") on October 9, 2012 as part of the government-to-government consultation on the proposed Florence Copper Project (the "Project"). This letter follows up on the discussions from that consultation meeting.

As you are aware from our recent discussions and the multiple letters that I have written regarding the Project, water is precious to the Community's farming lifestyle, agricultural economy, health, and spiritual well-being, and the Community has worked hard and dedicated significant resources to securing and protecting its water rights. In 2004, the Community successfully negotiated the largest water settlement in United States history, where the Community agreed to settle its claims against the United States in exchange for the guarantee and protection of water rights. A critical component of protecting the Community's water rights involves maintaining water quality for current and future uses.

The Community remains concerned that EPA's issuance of an underground injection control program ("UIC permit") for the Project could adversely affect the Community's water resources. The Project is located approximately 10 miles from the Community's Reservation in close proximity to the Gila River (which flows through the Reservation). The groundwater that could be contaminated by project operations is also hydrologically connected to the groundwater below the Gila River Indian Reservation, which the Community has the right to divert and withdraw pursuant to its water rights settlement. The Community's concerns stem from the following facts regarding Curis' proposed *in-situ* mining operations:

- Curis proposes to use a potentially dangerous and unprecedented form of mining that has not been attempted on a commercial scale in the United States;
- Mining operations could directly inject acid mining solutions into underground sources of drinking water; and

- Downgradient drinking water sources could be contaminated by a sulfate and arsenic-laden plume from the mining operations;

Given these facts and the resulting threat to the Community's water resources and rights, in May 2012, the Gila River Indian Community Council unanimously passed Resolution GR-49-12, which opposed the risks presented by the Project. For these same reasons, the Community must continue to oppose the issuance of a permit that would authorize the operation of the proposed *in-situ* leach mine.

At our consultation meeting, EPA indicated that it would consider re-evaluating the aquifer exemption issued over 15 years ago when the mine was surrounded by 10,000 acres of open desert with no development present or planned. The Community fully supports such a re-evaluation in light of the significant changes that have occurred in the Project area. Rather than 10,000 acres of undeveloped desert, the mine is now surrounded by 5,000 residents, schools, shopping centers and restaurants, with thousands of additional acres proposed for further residential and commercial development.

EPA expressly recognized such changed circumstances when it rescinded and revoked the UIC permit in 2010. EPA's August 5, 2010 letter to Curis announcing this decision stated

EPA has considered the recent residential development (i.e., Anthem at Merrill Ranch) in the near vicinity of the area currently permitted for mining activity and the construction of several nearby drinking water production wells since the permit was issued in 1997. Due to the substantial lapse of time since the existing permit was issued, the absence of any permitted activity at the site over the last 10 years, and the new information regarding residential development in the area, EPA has decided that revoking and re-issuing the permit is appropriate.

The exact same circumstances that justified revoking the UIC permit should compel EPA to re-evaluate the aquifer exemption.

The Community is confident that upon reevaluating the aquifer exemption in light of current-day information, EPA will find that the aquifer exemption requirements are no longer met. Pursuant to 40 C.F.R. § 146.4, EPA can find that an underground source of drinking water is an exempted aquifer if the aquifer does not currently serve as a source of drinking water and cannot and will not in the future serve as a source of drinking water (for reasons enumerated in the regulations). The Lower Basin Fill Unit, a current and future drinking water source for the residents of Florence, is located downgradient of the mine. Johnson Utilities' nearest drinking water production well is located approximately one mile from the mining site. This should not be news to EPA, as EPA's August 5, 2010 letter revoking the UIC permit identifies the existence of "several nearby drinking water production wells."

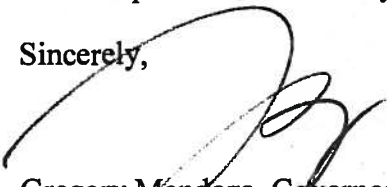
Even more, since the time that EPA issued the aquifer exemption, the Gila River Indian Community Water Rights Settlement Agreement ("Settlement Agreement") was enacted as law in the Arizona Water Settlement Act ("AWSA"). Section 204(a)(2) of the AWSA instructs that the water resources covered by the Act "shall be held in trust by the United States on behalf of the Community and its allottees" Paragraph 4.0 of the Settlement Agreement identifies an

annual allocation of 156,700 acre-feet of underground water as part of the water resources held in trust under AWSA. Thus, the groundwater under the Community's Reservation that the mining operations could affect is now a trust resource, and keeping the aquifer exemption in place could adversely affect this trust resource, which all federal agencies – including EPA – have an obligation to protect.

EPA has consistently recognized its trust responsibility, starting with adopting the *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (Nov. 8, 1984). One of the key principals of this policy states: "The agency, in keeping with the federal trust responsibility, will assure that tribal concerns and interests are considered whenever EPA's actions and/or decisions affect reservation environments." The Policy goes on to state that "[i]n keeping with the trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations." EPA has carried its policy position forward in the recently-issued *EPA Policy on Consultation and Coordination with Indian Tribes* (May 4, 2011).

As EPA continues to move forward in its decision-making on the Project, the Community requests that government-to-government consultation continue, and specifically requests a second face-to-face meeting before EPA makes any final decision on the proposed permit that could impact the Community's water resources, and thus implicates EPA's trust obligations.

Sincerely,



Gregory Mendoza, Governor
Gila River Indian Community

cc: Cathy Wilson, Bureau of Indian Affairs.